House Bill 244: TDR/SDD Legislation Highlights

What does this legislation do?

House Bill 244 accomplishes several things:

- Gives landowners who live outside designated growth zones an option for retaining equity while preserving their land
- Preserves farmland and open space with virtually no taxpayer dollars other than administrative costs
- Provides local governments with a tool for financing new growth without burdening existing taxpayers
- Promotes more efficient and livable growth
- Gives counties flexibility to set up TDR programs that suit their unique circumstances

What is the Transfer of Development Rights (TDR)?

TDR has been used across the country to preserve land in rural areas. Generally, a developer purchases a landowner's development rights, either directly or through a TDR "bank," then has them transferred into a growth area. The landowner can keep farming or sell the land for a variety of agricultural-related purposes, but he or she cannot develop his acreage. The developer receives additional density for the TDRs; the local government is responsible for zoning and setting standards for how the new development will be designed and fit into the community at large.

Kent County has an operating TDR program that would be complemented by this legislation. New Castle County's new comprehensive plan requires the use of TDRs to be successful.

What are Special Development Districts (SDDs)?

With this legislation, the area into which the TDRs go can be designated a Special Development District in which growth must be planned for and funded in advance of construction. SDDs would required to be mixed use – commercial, residential and other uses – to promote more livable communities.

The cost of future growth within the district would be financed and repaid through a special assessment on future residents and businesses within the SDD, not on current residents of a municipality or county. The SDD concept resolves a major concern about Transfer of Development Rights — that additional units per acre in a growth zone will put a strain on a local government and its taxpayers.

When bonds are issued within the SDD to fund infrastructure, the local government owns the infrastructure. Repayment of the tax-exempt bonds is tied to the special assessment and does not affect the local government's general obligation debt. In the towns that currently have SDDs (including Bridgeville and Millsboro), the special assessment is about $1,000 per single-family unit – so total taxes are still relatively low. The individual homeowner is only liable for his or her assessment. If the developer were to finance the infrastructure up front, it would add $20,000-$25,000 to the price of individual lots.

What are the unique features of this bill?

Besides the tying of TDRs to Special Development Districts where master planning and advanced funding will be required, this bill requires that annexations of vacant, undeveloped land ("greenfields") occur at the county's base density and can only be upzoned through the purchase of TDRs. (There is a joint state-local waiver process in the bill.)

The municipality accepting the TDRs would receive 10 percent of the proceeds from the sale of the TDRs to meet the growth in municipal service demands caused by development.

The legislation still permits private TDR transactions, but each county would be able to create its own version of a TDR "bank" The bank would provide transparency and a benchmark to landowners interested in selling their development rights.